

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALTON MCDONALD,

Plaintiff,

v.

ANNE E. KIRKPATRICK, et al.,

Defendants.

CASE NO. C07-396RAJ

ORDER

This matter comes before the court on Defendants' summary judgment motion (Dkt. # 22). Neither party has requested oral argument, and the court finds the motion suitable for disposition on the basis of the parties' briefing and supporting evidence. Having considered this motion and all other filings related to the motion, the court GRANTS Defendants' motion (Dkt. # 22).

I. FACTUAL BACKGROUND

Plaintiff Alton McDonald and Federal Way Police Officer Brigit Clary were each driving a car on the highway shortly after 5 a.m. on January 29, 2005. McDonald testified that he flashed his car's high-beam lights at Clary's car while driving closely behind her, claiming he did so because she was talking on her cellular phone and he wanted her to notice that she had cut him off. Edsel Decl. (Dkt. # 62), Ex. A-Part One at 26-27. Clary testified that, in addition to using his high-beam lights, McDonald also drove in a reckless manner – abruptly speeding up and slowing down – in an attempt to keep his car parallel to her car. *Id.*, Ex. A-Part Two at 3-5. Clary then turned on her police siren to stop McDonald's car.

1 McDonald pulled over, but refused to get out of his car or talk to Clary, instead
2 calling 911 because he suspected that the stop was racially motivated. McDonald is
3 African-American. Defendants Lieutenant Edward Fadler and Officer Steve Olson
4 arrived at the scene and McDonald was eventually arrested and taken into custody.
5 McDonald complained to Defendant Officer Manuel Mairs at the jail that his handcuffs
6 were too tight, but Mairs refused to adjust the handcuffs.

7 McDonald's car was searched incident to arrest and impounded, and he later
8 challenged the impoundment. After a hearing, the court found that the impoundment was
9 proper. McDonald was initially charged with reckless driving. This criminal charge was
10 reduced to an infraction for failing to dim headlights, and McDonald was found to have
11 committed the infraction.

12 McDonald sued Clary, Fadler, Olson, and Mairs, and former Federal Way Chief of
13 Police Anne Kirkpatrick, alleging that Defendants are liable under 42 U.S.C. § 1983 for
14 five violations of McDonald's constitutional rights. Defendants have moved for summary
15 judgment on all of McDonald's claims.

16 II. ANALYSIS

17 Summary judgment is proper where "the pleadings, depositions, answers to
18 interrogatories, admissions on file, together with the affidavits, if any, show that there is
19 no genuine issue as to any material fact and that the moving party is entitled to judgment
20 as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
21 (1986). A defendant may show that no genuine issue of material fact exists by either (1)
22 submitting summary judgment evidence that negates the existence of a material element
23 of the plaintiff's claim, or (2) showing there is no evidence to support an essential
24 element of the plaintiff's claim. *Celotex*, 477 U.S. at 322-25.

25 Defendants seek summary judgment on all five of McDonald's Section 1983
26 claims. A plaintiff may bring a claim under Section 1983 to redress violations of his or
27 her "rights, privileges, or immunities secured by the Constitution or [federal] laws" by a
28 person or entity acting under the color of state law. 42 U.S.C. § 1983; *Awabdy v. City of*

1 *Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004). The elements of a Section 1983 claim are
2 that (1) the plaintiff held a constitutionally protected right, (2) the plaintiff was deprived
3 of that right in violation of the Constitution, (3) the defendants intentionally caused the
4 deprivation, and (4) the defendants acted under color of state law. *Schertz v. Waupaca*
5 *County*, 875 F.2d 578, 581 (7th Cir. 1989). The court will analyze each of McDonald's
6 Section 1983 claims to determine whether Defendants are entitled to summary judgment.

7 **2. McDonald's Section 1983 claims related to his arrest fail as a matter of law**
8 **because the arrest was supported by probable cause.**

9 McDonald alleges that his arrest and the subsequent search and impoundment of
10 his car violated his constitutional rights (1) to be free from unreasonable arrest, (2) to be
11 free from illegal search and seizure, and (3) to travel and free association.¹ Defendants
12 argue that because a prior court has already determined that the arrest was supported by
13 probable cause, all of McDonald's claims predicated on the arrest fail as a matter of law.

14 When a plaintiff has had a full and fair opportunity to challenge a probable cause
15 determination in a prior proceeding, he or she may be collaterally estopped from
16 subsequently challenging the propriety of the arrest under Section 1983. *See Schertz*, 875
17 F.2d at 582. Collateral estoppel applies if (1) the issue decided in the prior adjudication
18 is identical to the one presented in the current action, (2) the prior adjudication resulted in
19 a final judgment on the merits, (3) the party against whom collateral estoppel is asserted
20 was a party or in privity with a party to the prior adjudication, and (4) precluding

23 ¹ McDonald alleges that his rights to travel and free association were violated because he
24 was arrested and his car was impounded, preventing him from driving and keeping appointments.
25 These are not the types of activities protected by the constitutional rights to travel and free
26 association. *See Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999) (stating that the right to
27 travel does not imply a fundamental right to drive); *Dallas v. Stanglin*, 490 U.S. 19, 25 (1989)
28 (holding that the constitutional right to free association does not include a generalized right to
social association). Because McDonald has not shown that his constitutional rights to travel or
free association were violated due to the arrest or impound, he has failed to state a valid Section
1983 claim. *See Schertz*, 875 F.2d at 581.

1 relitigation of the issue does not work an injustice on the estopped party. *Clark v. Baines*,
2 150 Wn.2d 905, 913 (2004).

3 McDonald claims that he is not barred from challenging his arrest because the
4 issue to be decided at the impoundment hearing (whether the impoundment was lawful) is
5 not the same as the issue presented in this case (whether the arrest violated his
6 constitutional rights). It is true that the ultimate issues to be determined in the two
7 proceedings are different, but the impoundment court did make a determination that
8 McDonald's arrest was supported by probable cause to support the arrest.

9 At his impound hearing, McDonald challenged the propriety of the impound on the
10 ground that his arrest was unlawful because it was entirely motivated by racial
11 discrimination. Edsel Decl., Ex. A-Part Two at 62. After hearing testimony from
12 McDonald and Clary, however, the court found that probable cause existed to support the
13 arrest based on Clary's observations of McDonald's driving. Edsel Decl., Ex. A-Part
14 Two at 66. Police officers may impound a driver's vehicle "whenever the driver of a
15 vehicle is arrested and taken into custody by a police officer." RCW 46.55.113(2)(d).
16 The impound court considered whether the arrest was supported by probable cause in
17 order to determine whether the impoundment was statutorily proper.

18 A copy of the municipal court's docket shows that probable cause was also
19 established at McDonald's arraignment hearing, weeks before the impound hearing. *See*
20 Christensen Decl. at 27, 31-32. McDonald has not shown or even alleged that he did not
21 have a full and fair opportunity to challenge any of these probable cause determinations
22 made by the municipal court.² In this court, McDonald has not challenged the existence
23 of probable cause, but has simply alleged that the Defendants were motivated to arrest
24 him because of racial discrimination. But an arrest does not violate the Constitution when
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26
27 ² McDonald has moved for sanctions, claiming that Defendants' contention that probable
28 cause was already determined is frivolous. Because the court finds that the municipal court did
make a probable cause determination, the motion for sanctions (Dkt. # 58) is DENIED.

1 it is supported by probable cause, however, regardless of the motivations of the arresting
2 officers. *Schertz*, 875 F.2d at 582; *see also Whren v. United States*, 517 U.S.806 (1996).

3 Because the municipal court found that probable cause supported McDonald's
4 arrest, McDonald cannot relitigate the propriety of his arrest in this Section 1983 action.
5 Because his arrest was supported by probable cause and therefore lawful, the police were
6 entitled to search and impound McDonald's car. *See United States v. Mayo*, 394 F.3d
7 1271, 1277-78 (9th Cir. 2005) (holding that police may conduct a search of the entire
8 passenger compartment of a vehicle, as well as any containers within it, as an incident to
9 the arrest of one of the vehicle's occupants); RCW 46.55.113(2)(d) (police may impound
10 a car if the driver has been arrested and taken into custody).

11 McDonald has not shown that Defendants violated any of his constitutional rights
12 in arresting him or searching and seizing his car. Accordingly, his three Section 1983
13 claims related to his arrest and the seizure of his car must be dismissed.

14 **3. McDonald's Section 1983 excessive-force claim fails as a matter of law**
15 **because he has not shown that he suffered serious injuries from the**
16 **handcuffs.**

16 McDonald next claims that his constitutional rights were violated when Mairs
17 handcuffed him using unreasonable force. McDonald contends his wrists and hands were
18 injured as a result of the officer's tight handcuffing.

19 Allegations of painful handcuffing, without offering evidence showing a more
20 permanent injury, are insufficient to support an excessive force claim. *See Arpin v. Santa*
21 *Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001) (affirming summary
22 judgment dismissal of excessive-force claim because plaintiff did not submit medical
23 records showing she had suffered an actual injury as a result of being handcuffed) (citing
24 *Foster v. Metro. Airports Comm'n*, 914 F.2d 1076, 1082 (8th Cir. 1990)); *Rodriguez v.*
25 *Farrell*, 280 F.3d 1341, 1351-53 (11th Cir. 2002) (describing non-excessive handcuffing
26 technique as that which "ordinarily would be painful but cause minimal injury").

27 McDonald's hands and wrists were photographed at the jail after he complained of
28 pain from the handcuffs. The photos show indentation on McDonald's wrists from the

1 handcuffs, but he has not shown that these effects were lasting or serious. Furthermore,
2 he has not offered any evidence showing that he sought medical treatment regarding
3 injuries from the handcuffs. McDonald's allegations of pain, unsupported by any
4 evidence of a more permanent or serious injury, are insufficient to support his Section
5 1983 claim for excessive force.

6 **4. McDonald's Section 1983 claim based on spoliation of evidence fails as a**
7 **matter of law because he has not shown that any exculpatory evidence**
8 **was altered, concealed, or destroyed.**

9 McDonald claims that Defendants violated his constitutional right to a fair trial by
10 "altering, concealing, or destroying evidence, including exculpatory evidence."

11 Complaint at § 68. McDonald alleges Defendants failed to produce (1) a recording of the
12 arrest from a camera in Clary's police car, (2) Clary's cellular phone records for the time
13 period before the arrest, and (3) radio communications between Defendants.

14 Due process requires that the prosecution preserve evidence that "possess[es] an
15 exculpatory value that was apparent before the evidence was destroyed and be of such a
16 nature that the defendant would be unable to obtain comparable evidence by other
17 reasonably available means." *California v. Trombetta*, 467 U.S. 479, 489 (1984). The
18 prosecution has a duty to preserve exculpatory and material evidence, but does not, in the
19 absence of bad faith, have a duty to find or seek such evidence. *Miller v. Vasquez*, 868
20 F.2d 1116, 1119 (9th Cir. 1989).


21 None of the evidence McDonald identifies as the basis for his spoliation claim is
22 both exculpatory and material. The first piece of evidence, a video recording of the arrest
23 – if it existed – could have been exculpatory and material, but McDonald has not
24 identified any obligation on the part of Defendants to make such a recording. Clary
25 testified that the camera in her police car was inoperative, and McDonald has not argued
26 that the Defendants failed to record the arrest in bad faith. Therefore, Defendants' failure
27 to record the arrest does not violate McDonald's right to due process. *See Miller*, 868
28 F.2d at 1119-20.

1 McDonald has also failed to show that the second and third pieces of evidence,
2 Clary's private phone records and radio communications between the Defendants, were
3 either exculpatory or material. It is not apparent that either piece of evidence would be
4 exculpatory, and McDonald has not shown that he has been unable to obtain this
5 evidence. The municipal court docket, in fact, suggests that the court granted
6 McDonald's motion to subpoena Clary's phone company directly to obtain the records.
7 Christensen Decl. at 34. McDonald also admits that Defendants produced the radio
8 evidence in their possession, and to the extent that he is alleging that other
9 communications should have been recorded, he has not shown that Defendants were
10 obligated to make such a recording. *See Miller*, 868 F.2d at 1119-20. Because
11 McDonald has failed to establish that Defendants altered, concealed, or destroyed
12 exculpatory evidence, his Section 1983 claim based on evidence spoliation must be
13 dismissed.

14 IV. CONCLUSION

15 Because McDonald has failed to show that Defendants violated any of his
16 constitutional rights, Defendants are not subject to liability under 42 U.S.C. § 1983 and
17 Defendants are entitled to judgment as a matter of law. IT IS HEREBY ORDERED that
18 Defendants' summary judgment motion (Dkt. # 22) is GRANTED and McDonald's
19 motion for sanctions (Dkt. # 58) is DENIED. The court directs the clerk to enter
20 judgment for Defendants.

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22 Dated this 27th day of February, 2008.

23 
24 The Honorable Richard A. Jones
25 United States District Judge
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